

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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97874

FILE: B-186797

DATE: July 23, 1976

MATTER OF: Veterans Administration Request for Decision
Concerning a Mistake in Bid Alleged by L.E.B. Inc.

DIGEST:

Where disparity of approximately 25 percent between low bid and next low bid does not put contracting officer on constructive notice of mistake in bid due to reasonable progression of all bids, and alleged mistake in bid after award is due to negligent reading of specifications by low bidder, bidder must bear consequences of own neglect.

The instant case involves a mistake in bid alleged after award of a contract. The Veterans Administration Hospital at Perry Point, Maryland, issued an invitation for bids (IFB), dated December 8, 1975, for performance of work described as:

"LABOR, MATERIALS AND EQUIPMENT to demolish buildings, install planting materials and install exterior floor access door, located at Veterans Administration Hospital, Perry Point, MD."

The IFB listed eight items which comprised the entire demolition project. The Government estimate for the project was \$400,000 to \$600,000; there were no item-by-item estimates. After the last of the eight items had been listed, the following "Note" appeared:

"It is contemplated that items one thru four will be awarded on an aggregate basis, however, the Government reserves the right to award on an item by item basis when any monetary savings can be achieved.

* * * * *

"Award on Items 1 through 8 will be made within the funding allocated. If bids received exceed funds available, bid items to be accomplished will be selected by the Hospital Director."

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Item 7 of the IFB provided for:

"Labor and material to install one (1) 4' x 8' exterior floor access door, six (6) 1-3/4" metal doors, locks, jambs and three sets of steps, located at Veterans Administration Hospital, Perry Point, Maryland. * * *"

Bids were opened on January 22, 1976. Twenty-nine firms responded to the invitation, 11 of which also submitted a bid for item 7. The bids submitted for item 7 ranged from a low bid of \$8,500 (L.E.B.'s bid) to \$32,000. The bid abstract for item 7 is as follows:

L.E.B. Inc.	\$ 8,500
International Demolition & Salvage Co.	10,700
Alpine Wrecking Corp.	12,500
William J. Williams, Jr.	12,588
Wickersham, Inc.	12,800
Mayer Pollack Steel Corp.	13,500
Central Atlantic Contractors	14,300
Fred L. Hawkins Co., Inc.	17,000
Modern Wrecking Const. Co.	17,650
Paz Brothers, Inc.	17,714
John Driggs Co.	32,000

The bid form contained blank spaces under each of the separately listed eight items for the bid on that item. The blank space under item 7 was labeled "Total Amount for Item 7 (1 JOB)."

On February 20, 1976, the contracting officer notified L.E.B. by mail that its low bid of \$8,500 for item 7 had been accepted. One week later, on February 27, 1976, L.E.B. sent a letter to the contracting officer which in pertinent part contained the following language:

"* * * [E]vidently there is some misunderstanding of the specifications. We bid the job on the basis of a lump sum award. We supplied figures for the extra items as did other contractors on the basis that the low bidder for the demolition work would be awarded the whole job.

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"We are demolition contractors and not experienced in the field of erecting doors or general construction. We feel that it would be in the best interest of the government as well as the contractor to have a legitimate contractor perform the work as called for in the specifications as we would have done in the event we were awarded the whole contract as a package."

The letter further asserted that the bid price of \$8,500 for item 7 did not include overhead and profit and asked that L.E.B. be allowed to withdraw its bid, or, in the alternative, that the contract price be negotiated to arrive at a reasonable price for the work contemplated by item 7.

On March 2, 1976, the contracting officer requested that L.E.B. submit worksheets and all other relevant information which would aid in substantiating the alleged mistake. L.E.B. complied on March 24, 1976. None of the work contracted for has been done to date.

As required by Veterans Administration Procurement Regulation (VAPR) § 8-2.406-4(b), the contracting officer submitted the matter for determination to the Director of the Supply Service (Director). The contracting officer recommends against any relief because (1) the "Note" alerted the bidders to the possibility of an item-by-item award; (2) there were irregularities in L.E.B.'s bidding method; and (3) in view of the other bids, he was not on constructive notice of any error in L.E.B.'s bid prior to award.

In a letter to our Office dated June 16, 1976, the Director recommended that the contract be canceled and offered the following by way of justification:

"(1) [T]he average bid price from the second through fifth low offer was \$12,147 or approximately 43 percent higher than L.E.B.'s low offer of \$8,500; and

* * * * *

"[(2)] Since there was such a wide disparity in bids indicating the possibility of error, it would appear that the contracting officer should have taken steps to verify correctness of the \$8,500 bid of L.E.B. Inasmuch as such action was not

taken, I am of the opinion that a valid and binding contract was not consummated."

The recommendation to cancel is submitted to our Office for approval pursuant to VAPR § 8-2.406-4(b).

In general, if an IFB clearly states the Government's needs, responsibility for bid preparation lies with the bidder, B-164865, July 31, 1968. Our Office has not granted relief from an award of contract, either by reformation or rescission/cancellation, where a bidder has made a unilateral mistake in bid unless the contracting officer knew or had reason to know of the mistake prior to award, Roger C. Mortensen, B-179956, February 21, 1974, 74-1 CPD 88; Stainless Piping Supply Company, B-184780, December 23, 1975, 75-2 CPD 407.

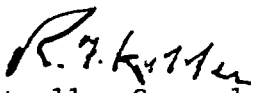
A contracting officer will generally be charged with constructive notice of a mistake when the bid price deviates significantly from other bids received or from the Government estimate, Roger C. Mortensen, *supra*. However, such a deviation will not charge the Government with notice if under all attendant circumstances, it was reasonable for the contracting officer to believe that there was no error apparent in the bid, A. C. Ball Company, B-178402, April 18, 1974, 74-1 CPD 202. If the Government is not on constructive notice of an error, the bidder must bear the consequences of its mistake, Stainless Piping Supply Company, *supra*.

Disparities ranging from 5 to 38 percent have been held by our Office to be insufficient, by themselves, to charge the contracting officer with constructive notice of a mistake in bid. This is particularly true where there is a reasonable progression of bids as well as a Government estimate which closely corresponds with the lowest bid, A. C. Ball Company, *supra*; Clark Manufacturing, Inc., B-182789, June 26, 1975, 75-1 CPD 388; Greg Houda, B-184580, September 12, 1975, 75-2 CPD 146. Although there is in the instant case no item-by-item Government estimate, the bids followed a reasonable upward progression. It follows, therefore, that the approximately 25-percent disparity between L.E.B.'s low bid and the next low bidder is, by itself, insufficient to conclude that L.E.B.'s bid is out of line to the extent that the contracting officer was placed on constructive notice of a mistake in bid. See R. E. Lee Electric Co., Inc., B-184249, November 14, 1975, 75-2 CPD 305.

L.E.B.'s alleged mistake is due to its misreading of the specifications rather than a mere clerical or mathematical error for which our Office has frequently granted relief. See, for example, Veterans Administration Request for Decision Concerning a Mistake in Bid Alleged by American Food Services Equipment, Inc., B-181878, August 6, 1974, 74-2 CPD 83. Nor are the IFB specifications in the instant case ambiguous. It is clear that the Government reserved the right to award on an item-by-item basis. It is no less clear that under item 7, the price to be written there was to be the "Total Amount for Item 7 (1 JOB)." We fail to discern any reasonable reading of the "Note" or of item 7 itself which would warrant the interpretation that a bidder may offer a bid upon something less than an entire "JOB," including profit and overhead which were allegedly omitted. The "mistake" was easily avoidable by a prudent reading of the IFB. Our Office has held that where a bidder failed to read specifications carefully, he must bear the consequences of his own neglect. See B-168049, December 2, 1969; Koehring, PCM Division, B-182833, March 18, 1975, 75-1 CPD 162; B-167676, March 17, 1970.

Accordingly, we find no basis for granting any relief to L.E.B. Inc.

Deputy


Comptroller General
of the United States